



**CITY COUNCIL
and
COMMUNITY DEVELOPMENT AGENCY
MINUTES**

Tuesday, October 28, 2003
7:00 p.m.
801 Laurel Street, Menlo Park, CA 94025
Menlo Park City Council Chamber

7:00 p.m. REGULAR MEETING (Menlo Park City Council Chamber)

ROLL CALL - Jellins, Duboc, Collacchi, Kinney, Winkler

PLEDGE OF ALLEGIANCE

STAFF PRESENT - David Boesch, City Manager; William McClure, City Attorney; Audrey Seymour, Assistant City Manager; Silvia Ponte, City Clerk. Various department heads and other City staff were present.

A. PRESENTATIONS AND PROCLAMATIONS - None

B. COMMISSION VACANCIES AND REPORTS

1. There is one vacancy on the Environmental Quality Commission to fill an un-expired term ending August 2004. Application deadline is Tuesday, November 4, 2003 at 5:30 pm.

Mayor Jellins announced the vacancy.

2. Council Member Reports.

Mayor Pro Tem Duboc read a letter from Eliza Aldridge stating that she supports the establishment of a dog park and is glad that dogs can enjoy that area.

Council Member Kinney reported that during negotiations with CalTrans there was success regarding tree planting and the width of the median for El Camino, and he appreciates the efforts of Assemblyman Joe Simitian.

Mayor Jellins reported that at the San Mateo County Endowment and Trust Fund meeting there was a unanimous vote to submit an application requesting funds from the State. Mr. Jellins also attended the Council of Cities meeting.

C. PUBLIC COMMENT #1 (*Limited to 30 minutes*)

Vafa Milani spoke in regards to the dog park and she disagrees with the location because of the noise from 8:00 a.m. to 8:00 p.m. Ms. Milani stated that she did not receive proper notification on this matter, and she believes residents need to be heard in issues that affect them.

Elizabeth Houck supports an off leash dog park in Menlo Park but believes the current location is not appropriate. Ms. Houck said there wasn't more notification to neighbors. She asks the Council to reconsider the location because in her opinion it is in a highly dense residential area.

Karen Rall concurs with the previous speaker and believes the location is difficult because of the traffic and the residential neighbors. Ms. Rall respects the rights of dog owners but believes this is not a good design. She asks the Council to get better resources for pets since this is not a good design.

D. CONSENT CALENDAR

Consent Agenda items are considered to be routine and will be enacted by one motion. There will be no separate discussion on these items unless members of the Council, staff or public request specific items to be removed for separate action.

1. Approval of the Citywide Speed Limit Survey and adoption of a Resolution 5476B for the recommended speed limits.
2. Community Development Agency acceptance of work for the Hamilton Avenue Demolition Project.
3. Adoption of a Resolution No. 5476 to grant a designated period for two years additional service credit pursuant to Government Code 20903.

Council Member Collacchi pulled item D1 and item D3.

M/S Duboc/Winkler to approve item D2 of the Consent Calendar. Motion carries unanimously.

Item pulled D1

Rene Baile, Transportation Engineer answered questions from Council relating to the speed and location of signs. Mr. Baile stated that there was no significant influence as a result of the signs. Council Member Collacchi was satisfied with the answers. Council Member Collacchi asked about the history of this matter and Mr. Baile stated that Council approved this matter in August 28, 2003 however it was supposed to come back with the reduction of the speed limit on Sand Hill Road. Mr. Baile clarified that Encinal Road speed limits are to remain the same.

M/S Collacchi/Kinney to approve Consent Calendar item D1. Motion carries unanimously.

Item pulled D3

Council Member Collacchi wanted clarification on the nature of the recommendation. Mr. Boesch, City Manager clarified that this item relates to early retirement incentives (golden handshake) and the City had two employees that took this option. This staff report relates to the required language from the California Public Employee Retirement System to offer early retirement incentives and offering two additional years of retirement benefits.

M/S Collacchi/Duboc to adopt Consent Calendar item D3. Motion carries unanimously.

Mayor Jellins explained that there had been some discussion about taking the Agenda items out of order, given an anticipated larger number of participants for the public hearings. Mayor Jellins asked for a show of hands from the public who is to speak on item F1. Based on the number of individuals present to address this item, the Mayor suggested that item F1 be heard first.

F. REGULAR BUSINESS

1. Consideration of a request for a fee waiver associated with future applications for a Use Permit and Building Permit for an addition to a detached accessory structure located at 841 Middle Ave.

Jeff Smith, Associate Planner presented the report explaining that this matter relates to an addition that was built without permits. At this time the applicant is asking for a fee waiver, and staff is asking for direction from Council on this matter.

Mayor Jellins asked for Public Comment

Public Comment

Dan Finlay spoke on behalf of the applicants whom he has known for over 15 years. Mr. Finlay stated that the applicants upon contacting two vendors in town purchased the shed without knowing it needed a permit. Mr. Finlay is asking that due to financial difficulties the applicants are facing, the

City waive the fee of \$1,250. Mr. Finlay stated that the applicants collected over 40 signatures from neighbors supporting their request. He asked that Council grant the fee waiver.

Council Discussion

Mayor Jellins asked for clarification on the waiver of the application fees, and how this will not exclude the requirement that the application be submitted and heard by the Planning Department.

M/S Duboc/Jellins to waive the fee and have staff come back to Council with appropriate limitations, and a draft ordinance that would (in certain cases) empower the City Manager to waive fees.

Substitute motion by Council Member Kinney to:

- **defer the fees on the condition of offering the possibility of a lien on the property, to be paid at the refinancing of the property or sale of the property or a 36-month plan to pay the fees**
- **exclude the City Manager from making decisions on waving fees because these are policy decisions, and Council Member Kinney would not like to place the City Manager in that tough position**
- **direct staff to come back with a proposed form of ordinance that includes these points.**

Council Member Kinney explained that he has concerns with setting a precedent with this case, and that not knowing the law does not excuse responsibility.

Council asked for clarification on the property lien, and legal counsel McClure explained that a promissory note would be required of the applicant.

Second by Council Member Winkler.

Friendly amendment by Council Member Collacchi to allow a deferral of fees but include a method of repayment, and have staff come back with a draft policy in the form of an ordinance, in which the City Manager can have some discretion.

The friendly amendment was accepted.

Mayor Pro Tem Duboc asked questions about the structure in question and how temporary it is. Mr. Smith clarified that it is a permanent structure fully attached.

Mayor Pro Tem Duboc stated that she would not support the substitute motion because this is the time to show compassion, and this is an elderly lady who might be upset with a lien procedure. Ms. Duboc would like to unburden the applicant.

Vote on substituting the later motion for the former motion. Motion carries 3 to 2 with Jellins and Duboc dissenting.

Vote on the substitute motion:

Motion carries 4-1 with Mayor Pro Tem Duboc dissenting.

E. PUBLIC HEARING

1. Appeal of a decision by the Planning Commission to deny a Use Permit at 849-851 Cambridge Avenue to allow the demolition of two existing residences and the construction of two new, two-story residences located on an R-2 zoned lot that is substandard with regard to lot width and for excavation into the required right side setback for the construction of a sunken patio associated with basements in each of the units.

Council Member Kinney recused himself from this item due to a possible conflict of interest. He left the Council Chambers due to the fact that his residence is within 500 ft of the site.

Stephen O'Connell, Planning Consultant presented the staff report sharing a chronology of events and clarified that the staff report included correspondence received relating to the item.

Mr. McClure reiterated that the process includes having the appellant make a presentation, and Mayor Jellins invited the appellant to make a presentation no longer than 10 minutes.

Mr. Richard Li presented a reconsideration of previous approaches when addressing this very emotional matter. Mr. Li explained his efforts in trying to contact his neighbor and in dealing with the City's Planning Commission. He stated that he tried to incorporate the vast majority of the recommendations from staff and the Planning Commission. One of these modifications includes having the second story be positioned in a way that the long shadows fall on Mr. Li's lot. Also the second story of the property is behind an oak heritage tree that serves as a good screen, and that will be kept that way.

Mr. Li stated that condition F of the staff report is not easily accommodated, and he provided reasons why. He believes this condition will have adverse consequences. Mr. Li stated that condition J is also not a fair request because not all projects have had to meet this feature. Mr. Li presented an Exhibit B showing 16 changes he has made to the design since April to accommodate feedback provided and to make the structure more fitting with the character of the neighborhood. Mr. Li explained all the documents he was presenting to Council to substantiate his case.

Mayor Jellins opened the Public Hearing

Dick Poe stated that he knows the appellant, and is concerned that the message going through this process is that this family is not welcomed in this community. Mr. Poe states that he wants Mr. Li as part of this community and welcomes him here, and hopes Council can streamline this process.

Cortland Bohacek lives approximately two blocks from the site, and lives in an R2 property. Mr. Bohacek believes this project is a welcomed change to a site that has two dilapidated homes that need revamping. Mr. Bohacek stated that he believes this project does its best to conform to current rules and regulations, so he hopes Council will approve this project.

Paul Kirincich asked the Mayor if it is permissible for a member of the public to videotape these meetings. Legal Counsel McClure stated that the Brown Act allows for anybody to videotape the meetings, and in fact the meetings are broadcast live on Channel 26.

Paul Kirincich believes the lot should be developed but he believes eight rooms in those two properties are too many. Mr. Kirincich stated that the development should be scaled down a little, because he does not believe a real attempt to compromise has been made. He believes the design should be less dense.

Kelly Kruse, who lives directly across from the property in question, is concerned about the density, and congestion that will come from this project. Ms. Kruse spoke as a mother who is concerned about her family and the issues that might come through with higher density and more traffic.

Dale Roat stated that he has an autistic son and he has serious concerns about his son dealing with the noise the construction will cause. Mr. Roat read a statement about the challenges of raising a child that is autistic and how this child is very sensitive to sounds. He believes that this project will traumatize both of his children, because he has a daughter who has asthma.

Lisa Shumway thanked her family and neighbors for their support during the last months. Ms. Shumway believes there is a zoning problem because the City zoned the City by street and not by block. Ms. Shumway believes that this project will negatively impact her property. She believes if the City approves this project then it will say that this will not affect the adjacent

lots, when in fact it does. Ms. Shumway stated that the Planning Commission has rejected this project twice, and a hybrid solution should be searched and reached.

Ken McDonnell asked the Council to uphold the decision of the Planning Commission and to deny the appeal until it is modified to show setbacks more compatible with adjacent sites. Mr. McDonnell believes the two homes are too big for these lots and he made four points: this project does not meet R2 low density requirement, the rear building represents a significant reduction in privacy and solar access for the neighbors, this issue is being deliberated in the absence of formal guidelines that are necessary to frame the discussion for R1 and R2 interface, and he feels it is disconcerting how the Planning Commissions' position is being marginalized.

Patti Fry spoke as a resident who asked Council to make specific findings based on the data. Ms. Fry highlighted several facts that this proposal introduces, and that in her opinion are unique: this is first two-story home in this area, basements proposed beneath both structures are not common, the sunken courtyard will essentially create two three-story buildings, and the proposed basements are almost as large as the existing houses. Ms. Fry stated that the design lends itself to conversions to rentals. Ms. Fry believes that his large-scale project can also create flooding to the street, and noise and light impacts as well as parking and traffic impacts.

Gary Gross believes this project is too big. He would feel more comfortable with an alternate plan.

Jean Glazener agrees with the people who have spoken before and she believes there haven't been any improvements to the designs and so she urges the Council to reject the appeal.

M/S Duboc/Winkler to close the Public Hearing.

Council Discussion

Council Member Collacchi asked questions about the setbacks for the houses. Mr. O'Connell stated that the rationale was to average the setbacks, and to provide a little more buffer for the other house in the rear. Mayor Pro Tem Duboc asked about the sunken patio to the architect of the project, Mr. Sam Sinnott and why the rear set back can't be changed. Mr. Sinnott clarified that the setback is tight enough and it will make it not pleasant in the front. Council Member Winkler asked about the setbacks between the buildings. Mr. Sinnott explained that the separation between buildings would be 45 feet and that is more than the minimum in that zone (for a rear setback).

Council Member Winkler prefaced her motion by stating that she is sorry that the Shumways will have to endure stress of any kind over this project.

M/S Winkler/Duboc to grant the appeal, approve the project with the conditions listed on attachment A to the staff report, with the exception of condition F and condition J subject to agreement of deletion of condition J by the neighbor (on west side). Consequently the motion is to take out condition F and J, but condition J is provisional on neighbor's approval.

Council Discussion

None.

Motion passes 3 to 1 (with Council Member Collacchi abstaining.)

Council Member Collacchi explained his disappointment at the lack of consensus, and he believes that the requirements did not seem too demanding. Mr. Collacchi is sympathetic towards Mr. Li's story but he is sorry that an arrangement was not made between the

neighbors. He also is disappointed that the two conditions from the neighbors were not met since they didn't seem too unreasonable.

2. Appeal of a decision by the Planning Commission to approve a Use Permit to allow for a dog groomer, a tax consultant, and a Café to occupy three tenant spaces on a property that is non-conforming in regard to parking, located at 1923-1929 Menalto Avenue, subject to a one year limit on the Café.

Council Member Kinney re-entered the Council Chambers.

Council Member Winkler left the room due to a statutory conflict of interest (proximity to site).

Jeffrey Smith, Associate Planner recommended that the Council uphold the condition of the appeal and grant the permit for a café due to the general approval of the neighborhood for this project. Mr. Smith stated that there was one correction to the minutes of the Planning Commission (circle page C4 last sentence on that page) it should read: "Commissioner Soffer asked whether Commissioner Sinnott would...".

Council asked about the alley and if it is a public way. Mr. Boesch, City Manager clarified that the alley way is not owned by the City, but owned by the adjacent property owners. Mr. McClure clarified that the County did not accept the alley for public dedication, so it never became part of the public way. Mr. McClure stated that if the City accepted this dedication then the City could improve it, however Mr. Boesch clarified that there is no responsibility to accept something and improve it. Council asked about the definition of "café", and staff clarified that there is no official definition of a "café". Council also asked about capital improvements for this area, and Mr. Smith clarified that work is scheduled for 2004. Mr. McClure stated that an assessment district could also be an option. Traffic concerns were shared and staff responded to questions relating to number of trips generated by these proposed uses.

Public Comment

Anatole Zelkin stated that last spring he went to the Chamber of Commerce to find some space to start his business. He envisions this project as a neighborhood place where people will come and visit and talk to each other. Mr. Zelkin said the neighborhood has expressed great interest in this matter, and Mr. Zelkin is pleased. Mr. Zelkin explained that each of the proposed businesses were well accepted by the people, and he asks the City Council to grant the permit at least for the same term as the lease because this way they will be able to have time to develop their businesses. Mr. Zelkin is hoping people will walk to this area instead of driving.

Rich Mintz thanked Mr. Zelkin for his efforts in communicating with the neighborhood, and trying to find a common ground. Mr. Mintz represents the Menalto Beautification Group and the Menalto Traffic Safety Group, and while he supports the café he believes a review mechanism is very important because of traffic, loitering, and safety concerns. Mr. Mintz would like the review process to be incorporated in the approval. Mr. Mintz stated that Ms. Greenfield had to leave but she supports this approach.

Kelly Fergusson urges the City Council to use strong language when defining the café because multiple uses may derive from this café. Ms. Fergusson stated that the fear is that there will be unmitigated impacts to the neighborhood. She is asking that Council carefully define the use of the café to protect the residents.

Brett Murphy shared traffic concerns because it is already challenging with the Hacienda Market. This market has greatly increased the flow of cars and it is dangerous during peak hours. Mr. Murphy supports the Hacienda Market but is very concerned about parking and safety; he supports the café but would like Council to ponder all impacts of this use.

Laure Laprais is a neighbor and stated that there isn't general support from the neighborhood for the café because there is no parking and traffic will increase. Ms. Laprais explained previous challenges with a hair salon that caused great traffic challenges in this area. Ms. Laprais stated that the Hacienda already attracts more traffic than it can accommodate. She asks for one-year review.

Ken Fuson lives very close to the area being discussed and he was aware since the beginning that the ownership of the alley way was in question, however litter has been increasing and cut through traffic is a real problem. Mr. Fuson stated that he would like the City to be able to check the use after one year, and he supports the café.

Rhoda Alexander acknowledged Mr. Zelkin's efforts in dealing with the concerns from the neighbors and trying to find appropriate uses. Ms. Alexander would like to be sure that this use permit is for dog grooming because she has concerns it might be for dog boarding. She would like to have everybody work together and find solutions that assure neighbors that this will be good for the neighbors.

Mary Charland supports the neighbors' comments and requests that the café permit be reviewed in one year. Ms. Charland thanked Ms. Fergusson and other neighbors who have worked on this matter.

Uriel Chavez is with Hacienda Market and he supports the current proposed uses, however he has concerns about the traffic. He is aware of challenges in the past, and he is here to work with neighbors to handle this matter.

Council asked Mr. Chavez questions about traffic and if he is open to work with the City to find better traffic and parking solutions. Mr. Chavez stated that he would be available.

M/S Duboc/Collacchi to close the Public Hearing. Motion carries unanimously.

Council Discussion

Council Member Kinney asked for clarification on current parking spaces and Mr. Smith clarified that the parking requirement for this site is 27 parking spaces. Mayor Pro Tem Duboc asked questions of Mr. Zelkin in regards to the length of time between issuance and review of the permit. Mr. Zelkin stated it would be very hard to find a good tenant if the review is going to be within one year, because it is very hard to establish oneself in this business and then have to be reviewed. Ms. Duboc asked if any other restaurants or cafes have review time limits. Arlinda Heineck, Community Services Director, stated that she couldn't recall any other permit that has this type of time limits.

Legal Counsel McClure explained the options available to Council should problems occur i.e. he explained revocation of use permit and other approaches that the City can exercise. Council asked questions about fast food as a possible use in this site, and Mr. McClure addressed some of these concerns.

M/S Jellins/Kinney to approve the use permit subject to the following conditions 1) in regards to the café to limit the amount of seating to a reasonable number 2) to limit the hours of operation 3) to include pedestrian and bicycle improvements to the site and this to be the responsibility of the property owner 4) and define the food served there not as fast food.

Mayor Jellins amended his motion to state:

M/S Jellins/Kinney to continue discussion of this appeal with direction to staff to return to Council with conditions which include the following conditions for Council consideration: 1) types of food 2) number of chairs 3) hours of operation 4) and pedestrian and bicycle improvements.

Council discussed placing conditions on the use permit depending on the success of the project.

Council Member Collacchi asked that conditions of sit down versus take out food be considered in the motion. Mayor Jellins agreed with this friendly amendment.

Council discussed the situation of the alley and Mr. McClure stated that this could be a requirement imposed by the City on Mr. Zelkin to upgrade or maintain his portion of the alley way. Ms. Heineck clarified that there is already a requirement in place that Mr. Zelkin cooperate with other owners on the maintenance of the alley.

Council Member Collacchi asked that it be clarified that the grooming place is not for boarding. Legal Counsel McClure stated that this is already clearly stated in the use permit. Council Member Kinney asked about the garbage being a concern, and Ms. Duboc asked that this item come back to Council soon.

Vote on the motion

Motion carries unanimously with four votes (Council Member Winkler recused).

Mr. David Boesch stated that this item could come back to Council on November 18, 2003.

Council Member Winkler re-entered the Council Chambers.

F. REGULAR BUSINESS

2. Consideration of state and federal legislative items or items referred to in Written Communications or Information Items, including decisions to support or oppose any such legislative, written communication or information item.

Council Member Kinney asked about the Vehicle License Fee (VLF) and its impacts in our City. Mr. Boesch stated that this could affect the City this fiscal year and on the next one.

G. WRITTEN COMMUNICATIONS - None

H. INFORMATION ITEMS - None

I. PUBLIC COMMENT #2 (Limited to 30 minutes)

J. ADJOURNMENT at 10:05 p.m.

Respectfully submitted,

Silvia M. Vonderlinden, City Clerk

Approved at the City Council Meeting of January 13, 2004.